

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

MIGUEL ANGEL COTA-GASTELUM,

Petitioner,

v.

// CIVIL ACTION NO. 1:14CV117  
(Judge Keeley)

RUSSELL A. PERDUE, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 14]

On July 8, 2014, the pro se petitioner, Miguel Angel Cota-Gastelum ("Cota-Gastelum"), filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, which the Court referred to United States Magistrate Judge James E. Seibert for initial screening and a Report and Recommendation ("R&R") in accordance with LR PL P 2. While that petition was pending, on June 29, 2015, Cota-Gastelum filed a motion under 28 U.S.C. § 2243 (Dkt. No. 13).

On August 18, 2015, Magistrate Judge Seibert issued a R&R, in which he recommended that the Court dismiss Cota-Gastelum's petition and the pending motion (Dkt. No. 14 at 6). Cota-Gastelum attempted to challenge the validity of his conviction using § 2241, but had failed to avail himself of the § 2255(e) savings clause. Id. at 5.

The R&R also specifically warned Cota-Gastelum that his failure to object to the recommendation would result in the waiver of any appellate rights he might otherwise have on this issue. Id.

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at 6. The parties did not file any objections.<sup>1</sup> On October 26, 2015, Cota-Gastelum wrote a letter apologizing to the Court for "the above style motion that was filed without my understanding of what was being filed" (Dkt. No. 23). Consequently, finding no clear error, the Court **ADOPTS** the Report and Recommendation in its entirety (Dkt. No. 14), **DENIES AS MOOT** the motion under § 2243 (Dkt. No. 13), and **ORDERS** that this case be **DISMISSED WITH PREJUDICE** and stricken from the Court's active docket.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court directs the Clerk of Court to enter a separate judgment order and to transmit copies of both orders to counsel of record and to the pro se petitioner, certified mail, return receipt requested.

Dated: October 26, 2015.

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/s/ Irene M. Keeley

IRENE M. KEELEY

UNITED STATES DISTRICT JUDGE

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<sup>1</sup> The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).